

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 16-3113

SAMUEL J. RUMPH,

APPELLANT,

v.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

ORDER

It appears that the Board of Veterans' Appeals (Board) mailed its decision on May 2, 2016. The appellant's Notice of Appeal (NOA) was filed on September 1, 2016, more than 120 days after the date reflected on the Board decision filed with the Court, which is the presumed date of mailing of the Board decision. The 120th day would have been August 30, 2016.

Generally, an appellant may obtain Court review of an adverse Board decision only if the appellant submits an NOA to the Court within 120 days of the date on which notice of the Board's decision was mailed. 38 U.S.C. § 7266(a). Equitable tolling of the 120-day time limit, however, is available when circumstances have precluded an appellant from timely filing his or her NOA despite the exercise of due diligence. *Bove v. Shinseki*, 25 Vet.App. 136, 140 (2011) (per curiam order). The appellant will be directed to show cause why his appeal should not be dismissed for untimely filing. *See* U.S. VET. APP. R. 4(a), 38(b).

Moreover, the Court notes that the Board decision transmitted by the Secretary contains a handwritten date and is not signed. The Secretary will be directed to file a signed and dated copy of the Board's decision. It is

ORDERED that the Secretary file a signed and dated copy of the Board's decision within 30 days after the date of this order. It is further

ORDERED that, within 30 days after the date of this order, the appellant show cause why his appeal should not be dismissed for untimely filing. If the appellant fails to do so, the Court may dismiss this appeal without further notice. Proceedings on this appeal are stayed until further order of the Court.

DATED: September 28, 2016

FOR THE COURT:

GREGORY O. BLOCK
Clerk of the Court

By: /s/ Cynthia M. Brandon-Arnold
Cynthia M. Brandon-Arnold
Chief Staff Attorney/Deputy Clerk

Copies to:

Samuel J. Rumph

VA General Counsel (027)

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